



## Grand Chamber Panel's decisions

At its last meeting (Monday 28 November 2016), the Grand Chamber panel of five judges decided to refer three cases and to reject requests to refer nine other cases<sup>1</sup>.

The following cases have been referred to the Grand Chamber of the European Court of Human Rights.

**Jakeljić v. Croatia (application no. 22768/12) and Radomilja and Others v. Croatia (no. 37685/10):** concerning the acquisition of ownership of socially-owned property by adverse possession;

**Naït-Liman v. Switzerland (no. 51357/07)**, concerning the refusal of the Swiss civil courts to examine Mr Naït-Liman's civil claim for compensation in respect of the non-pecuniary damage caused by his alleged torture in Tunisia.

### Referrals accepted

[\*\*Jakeljić v. Croatia \(application no. 22768/12\)\*\*](#)

[\*\*Radomilja and Others v. Croatia \(no. 37685/10\)\*\*](#)

The applicants in the first case, Jakov Jakeljić and Ivica Jakeljić, are Croatian nationals who live in Split (Croatia). The applicants in the second case, Mladen Radomilja, Ivan Brčić, Vesna Radomilja, Nenad Radomilja, and Marin Radomilja, are Croatian nationals who live/d in Stobreč (Croatia).

Under the legislation of the former Yugoslavia, in the period between 6 April 1941 and 8 October 1991, it was not possible to acquire ownership of socially-owned property by adverse possession. That rule was temporarily derogated between 1 January 1997 and 17 November 1999, allowing the period between 6 April 1941 and 8 October 1991 to be taken into account for the purposes of acquiring ownership of former socially-owned property by adverse possession. However, on 17 November 1999 the Constitutional Court invalidated that derogation as unconstitutional as it had resulted in adverse consequences for the rights of third parties (primarily those who were entitled to the restitution of property appropriated during the Communist regime). Thus the period between 6 April 1941 and 8 October 1991 was excluded again from the time necessary for acquiring ownership of former socially-owned property by adverse possession.

The applicants in both cases had all bought plots of land from various individuals, which were recorded in the land register in the name of the local authorities. Thus, in April 2002 they brought a civil action against the local authorities, seeking a declaration of their ownership of three plots of land (in the first case) and five plots of land (in the second case). They claimed in particular that the property had been in the possession of their legal predecessors for more than 100 years (in the first case) and for more than 70 years (in the second case) and, given that the statutory period for acquiring ownership by adverse possession had elapsed, they had validly acquired ownership of the land.

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The first-instance court ruled in their favour in June 2007 and May 2007, respectively. These judgments were, however, reversed on appeal, the second-instance court holding that the applicants' predecessors had not complied with the 40-year time-limit for acquiring ownership by adverse possession. The second-instance court notably found that the applicants' predecessors had only been in possession of the land (continuously and in good faith) since 1912 and that the running of the statutory time-limit had been interrupted in April 1941, when the legislation of the former Yugoslavia had prohibited the acquisition of ownership of socially owned property by adverse possession, and had only started to run again after October 1991 when that provision was repealed by Parliament.

The applicants' constitutional complaints were subsequently dismissed in September 2011 and September 2009, respectively.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicants complain that, in dismissing their claims, the domestic courts had misapplied the relevant domestic law in their cases, as the statutory time-limit for acquiring ownership by adverse possession was 20 and not 40 years.

In its Chamber [judgments](#) of 28 June 2016, the European Court of Human Rights held, by six votes to one, that there had been a violation of Article 1 of Protocol No. 1 in both cases. The Chamber relied on the Court's reasoning in a previous case ([\*Trgo v. Croatia\*](#) of 11 June 2009, application no. [35298/04](#)) according to which, unless third parties' interests were involved, it was not justified to exclude the period between 6 April 1941 and 8 October 1991 from the time necessary to acquire ownership of socially owned property by adverse possession. Therefore, the applicants should not – in the absence of any prejudice to the rights of others – have had to bear the consequences of the State's own mistake committed in enacting unconstitutional legislation.

On 28 November 2016 the Grand Chamber Panel accepted the Government's request that the cases be referred to the Grand Chamber.

#### [Naït-Liman v. Switzerland \(no. 51357/07\)](#)

The applicant, Abdennacer Naït-Liman, is a Tunisian national who has acquired Swiss nationality. He was born in 1962 and lives in Versoix in the Canton of Geneva.

According to the applicant, he was arrested on 22 April 1992 by the Italian police at his place of residence in Italy and taken to the Tunisian consulate in Genoa. He was presented with a bill of indictment according to which he represented a threat to Italian State security. He was then taken to Tunis by Tunisian agents. Mr Naït-Liman alleges that, from 24 April to 1 June 1992, he was arbitrarily detained and tortured in Tunis at the premises of the Ministry of the Interior on the orders of A.K., the then Minister of the Interior.

Following the alleged torture, Mr Naït-Liman fled Tunisia in 1993 for Switzerland, where he applied for political asylum. The Swiss authorities granted him asylum on 8 November 1995.

On 14 February 2001 Mr Naït-Liman lodged a criminal complaint with the Principal Public Prosecutor for the Canton of Geneva against A.K., while the latter was in hospital in Switzerland. Mr Naït-Liman applied to join the proceedings as a civil party seeking damages. On 19 February 2001 the Principal Public Prosecutor made an order discontinuing the proceedings on the grounds that A.K. had left Switzerland and the police had been unable to arrest him.

On 8 July 2004 the applicant lodged a claim for damages with the District Court against Tunisia and against A.K. The District Court declared the claim inadmissible on the ground that the court lacked territorial jurisdiction. It found that the Swiss courts did not have jurisdiction by necessity in the case at hand, owing to the lack of a sufficient link connecting the alleged facts with Switzerland. Mr Naït-Liman lodged an appeal with the Cantonal Court of Justice, which dismissed his claims on the grounds that the defendants enjoyed immunity from jurisdiction. It referred to the European Court

of Human Rights' Grand Chamber judgment of 21 November 2001 in the case of [Al-Adsani v. the United Kingdom](#).

Mr Naït-Liman lodged an appeal with the Federal Court which was dismissed on 22 May 2007. The Federal Court considered that the Swiss courts in any event lacked territorial jurisdiction.

On 14 May 2007 Mr Naït-Liman obtained Swiss nationality from the town of Versoix, which confirmed its consent on 25 May 2007.

Relying on Article 6 § 1 (right to a fair trial - right of access to a court) of the European Convention on Human Rights, Mr Naït-Liman complains of the fact that the Swiss courts declined jurisdiction to examine the substance of his claim for damages in respect of the acts of torture to which he alleged that he had been subjected in Tunisia.

In its Chamber [judgment](#) of 21 June 2016, the European Court of Human Rights held, by four votes to three, that there had been no violation of Article 6 § 1 (right of access to a court) of the European Convention concerning both the action against Tunisia and the action against A.K., the then Tunisian Minister of the Interior. The Chamber found in particular that the decision of the Swiss courts to decline jurisdiction to hear Mr Naït-Liman's civil action despite the absolute prohibition on torture under international law had not violated his right of access to a court, had pursued legitimate aims and had been proportionate to those aims.

On 28 November 2016 the Grand Chamber Panel accepted Mr Naït-Liman's request that the case be referred to the Grand Chamber.

### Requests for referral rejected

Judgments in the following nine cases are now final<sup>2</sup>.

#### Requests for referral submitted by the applicants

**Dorota Kania v. Poland** (application no. 49132/11), [judgment](#) of 19 July 2016

**U.N. v. Russia** (no. 14348/15), [judgment](#) of 26 July 2016

**Adam v. Slovakia** (no. 68066/12), [judgment](#) of 26 July 2016

**Ruban v. Ukraine** (no. 8927/11), [judgment](#) of 12 July 2016

**O'Neil and Lauchlan v. the United Kingdom** (nos. 41516/10 and 275702/13), [judgment](#) of 28 June 2016

#### Requests for referral submitted by the Government

**Ziaunys v. the Republic of Moldova** (no. 42416/06), [judgment](#) of 11 February 2016

**Aliyev and Gadzhiev v. Russia** (no. 11059/12), [judgment](#) of 12 July 2016

**Igoshin v. Russia** (no. 21062/07), [judgment](#) of 21 June 2016

**Oleynik v. Russia** (no. 23559/07), [judgment](#) of 21 June 2016

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<sup>2</sup> Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.